(3)

No. 04-491

Supreme Court, U.S.
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In The Supreme Court of the United States

DURAND DICKERSON,

Petitioner,

v.

G. RONALD BATES, JR., ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF OF ALL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Because Plaintiff purports to attack post-judgment garnishment proceedings, does *Pennzoil Co. v. Texaco*, 481 U.S. 1 (1987) provide an exception to the *Rooker-Feldman* Doctrine allowing Plaintiff's suit to proceed.

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STATUTE:

28 U.S.C. § 1254(1) 1

OPINIONS BELOW

The opinion of the Tenth Circuit Court of Appeals (Pet. App. A) is unreported but is noted at 104 Fed. Appx. 699. The opinion of the Kansas District Court (Pet. App. B) is reported at 287 F. Supp.2d 1251. A prior, related opinion of the 10th Circuit Court of Appeals is unreported but is noted 153 F.3d 726 and can be found at 1998 WL 380923. The district court opinion in the prior, related case is reported at 995 F. Supp. 1242.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on July 7, 2004. The petition for a *writ of certiorari* was served on October 5, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

In 1996, Paul and Deborah Leavitt retained G. Ronald Bates of the law firm Crow, Clothier & Bates to file suit against Durand Dickerson to have him evicted from commercial property they own. They later filed a separate action for damages against Dickerson. The Leavitts prevailed in both cases. Dickerson attempted to appeal in both cases, but his appeals were dismissed by the Kansas Court of Appeals.

The Leavitts then sought and obtained post judgment relief (execution and garnishment) in order to satisfy the judgment. Dickerson attempted to collaterally attack the underlying judgment and attack the post-judgment

proceedings in Kansas Court of Appeals Case No. 984356 and 83,451 (attached to Defendant Brown's Memorandum to Dismiss, Doc. # 17 as Exhibits C & D), both of which were also dismissed for his failure to comply with appellate procedure.

Dickerson then filed a federal action against the Leavitts and Leavitt Rentals and two state court judges, along with others. *Dickerson v. Leavitt Rentals*, 995 F. Supp. 1242 (D. Kan. 1998). It was dismissed on grounds of the *Rooker-Feldman*[1] Doctrine and failure to state a claim. The dismissal was affirmed on appeal, with the court describing Dickerson's arguments as "patently frivolous." *Dickerson v. Leavitt Rentals*, No. 98-3053, 1998 WL 380923 (10th Cir. 1998).

Dickerson then filed the present case making essentially the same factual allegations, changing defendants slightly, and changing his cause of action to a purported RICO claim. (Pet. App. F.) He basically argues that the defendants' efforts to collect the judgments were an illegal conspiracy. The district court dismissed on *Rooker-Feldman* grounds that the challenges to the post-judgment collection efforts were "inextricably intertwined" with the state court judgment, and that his claims that improper procedures were used in collection and could not be addressed without calling into question the underlying judgment. (Pet. App. F. pp. 5-6.)

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[1] The *Rooker-Feldman* Doctrine is the common name to the rule stating that federal district courts have no jurisdiction to review final judgments of a state court. The rule stems from the holdings in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923).

ARGUMENT

Dickerson's sole argument concerns a possible exception to the *Rooker-Feldman* doctrine suggested as *dicta* in concurring opinions in *Pennzoil Company v. Texaco Inc.*, 481 U.S. 1 (1987). *Dickerson argues that based on Pennzoil*, the *Rooker-Feldman* Doctrine does not apply to challenges to post-judgment proceedings. Dickerson's reading of these concurring opinions is far broader than intended, and the challenge in *Pennzoil* is factually different than his challenge.

The facts of *Pennzoil* were that Pennzoil obtained a judgment against Texaco in Texas state courts in excess of $11 billion against Texaco. *Id.* at 4. Under Texas law, in order to suspend execution of the judgment and appeal, Texaco would have had to post a bond in the amount of the judgment, along with interest and costs, which Texaco would have been unable to do. *Id.* at 4-5.

Texaco filed suit in federal court, arguing that Texas' bond provisions were unconstitutional. *Id.* at 7. The district court rejected the argument that the *Rooker-Feldman* Doctrine barred suit by Texaco, saying that the final judgment of the state court was not being called into question, only Texaco's constitutional right to raise claims on appeal. 626 F. Supp. 250, 254 (1986). The district court granted a preliminary injunction (against Pennzoil), which was affirmed by the Second Circuit. *Id.* at 8. The U.S. Supreme Court reversed, saying that the courts below should have abstained under *Younger v. Harris,* 401 U.S. 37 (1971). *Id.* at 6-18.

In a series of concurring opinions, three justices agreed with a concurring opinion written by Justice Brennan that the *Rooker-Feldman* Doctrine did not prohibit Texaco's suit. 481 U.S. at 18-20. Justice Brennan said,

> In *Rooker* and *Feldman,* the Court held that lower federal courts lack jurisdiction to engage in appellate review of state-court determinations. In this case, however, Texaco filed the § 1983 action only to protect its federal constitutional right to a meaningful opportunity for appellate review, not to challenge the merits of the Texas suit. Texaco's federal action seeking a stay of judgment pending appeal is therefore an action "'separable from and collateral to'" the merits of the state-court judgment. [Citations omitted.]

Id. at 21.

In *Pennzoil*, Texaco was asking for prospective, injunctive relief because Texaco argued it had no other remedy as to the bond and would be denied its constitutional rights. The exception to the *Rooker-Feldman* suggested by Justice Brennan is a limited one; it is for prospective relief only to prevent a denial of Constitutional rights, and only applies when there is no remedy in state court. *See Vargas v. City of New York,* 377 F.3d 200 (2nd Cir. 2004) ("where a federal plaintiff had an opportunity to litigate a claim in a state proceeding . . . , subsequent litigation will be barred under the *Rooker-Feldman* Doctrine if it would be barred under principles of preclusion." [quotation omitted])

Dickerson is not challenging the constitutionality of Kansas' post-judgment proceedings. He makes two allegations. His primary allegation is that the garnishments were improper because the underlying judgment was "void." *See* Aplt. App. F, p. 14 ¶ 69, p. 15 ¶¶ 74. He also makes more general allegations of misrepresentations and fraud. Dickerson is challenging how the garnishments were applied, not the overall scheme. In Kansas garnishments are routinely challenged in court, and are routinely

appealed. *See e.g., True Heart Corp. v. River City Auto Sales, Inc.*, 32 Kan. App.2d 237, 82 P.3d 519 (2003).

The garnishments in this case are long since final. Given that appellate relief was available to Dickerson, the garnishments themselves should be treated by the same respect by federal courts as are state judgments. There is no reason or purpose for federal review.

Even if the garnishments themselves are not treated as if they are judgments themselves, Dickerson's attack on the garnishment calls into question the validity of the underlying judgment. As previously noted, Dickerson's main claim that the garnishment was illegal is that he believes the underlying judgment was "void." In other words, Dickerson does ask the court to reconsider the underlying judgment. Since Dickerson's claim is that the garnishments are based on an underlying judgment he views as void, his claims are "inextricably intertwined" with the underlying judgment. As justice Marshall stated in his concurring opinion in *Pennzoil*,

> [A] federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment.

481 U.S. at 25 (Marshall J, concurring).

CONCLUSION

The petition for *writ of certiorari* should be denied.

Respectfully submitted,

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